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ABSTRACT

The charter school legislation in Colorado and its implementation are reviewed and analyzed. As of September 1997, there were 50 charter schools in Colorado, enrolling more than 11,000 students. Evaluation of these schools shows some strengths and weaknesses of the charter school system as it is operating in Colorado. The state's Charter School Act is strong in its theoretical provisions for adequacy, accountability, and autonomy, but as implemented, the program's emphasis has been on accountability. Colorado consistently fails to attend to concerns of equity in the implementation of its charter school laws. Political self-interest in the charter schools debate has yielded legislative compromise at the expense of low-income neighborhoods. The financial hurdles in opening a charter school have the potential to act as insurmountable obstacles for charter-seeking groups from low-income communities. Funding solutions for start-up activities are necessary to begin to address equity issues in the Colorado charter schools. (Contains 12 references.) (SLD)

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Charter Schools and the Compromise of Equity: An Evaluation of Colorado's Charter School Legislation

Introduction

Among the first states in the country to experiment with charter schools, Colorado enacted Senate Bill 93-183 in 1993, authorizing the establishment of up to 50 charter schools in Colorado. Written into this legislation was a "sunset" clause that delimited the lifespan of this bill, requiring legislators and community members to reconsider this charter school law prior to its expiration in 1998. Recently, in light of clear evidence attesting to the value of charter schools, Colorado legislators have revoked the "sunset law," eliminating any uncertainty about the immediate future of the debate and the local legislation. This move gives Colorado charter schools a firm footing in the continuing national debate about charter schools and school choice. However, legislators and the public will certainly continue debating the importance of charter schools, their effect on public schooling, and whether or not they are delivering on their intended outcomes. It is my hope that an evaluation of the strengths and weaknesses of the current legislation can add substantively to this debate.

While much of the comparative data across states suggests that Colorado's legislation is strong, there remain significant concerns and areas that demand further scrutiny by legislators and by the public. In this paper I intend to argue that in the ongoing charter schools debate in Colorado, as in other states, political self-interest has yielded legislative compromise at the expense of low-income neighborhoods. As such, the state of Colorado would be better served by due diligence to issues of equity as they pertain to the implementation of charter schools throughout the state. I hope to call attention to this policy issue, and to suggest some possible legislative avenues for addressing the concerns that arise from this issue.

Highlights of the Legislation

As of September, 1997, there were 50 charter schools operating in Colorado, enrolling over 11,000 students. (Colorado Dept. of Education) Responding to the rapid growth of charter schools, the Colorado Department of Education recently undertook an evaluation of those charter schools that had been operating for over two years. In their evaluation, the Colorado Department of Education revisited the charter school legislation, and wrote of Colorado lawmakers: "Their intent was that charter schools would be a tool for reforming the larger public education system, in the language of the Act, by:

- Encouraging parental involvement
- Creating new professional and leadership opportunities for teachers
- Encouraging diverse approaches to education and the use of different and innovative teaching methods
- Increasing learning opportunities for all students, with special emphasis on students who are academically low-achieving
- Making the public education system more flexible by creating a legitimate avenue for parents, teachers and community members to take responsible risks in creating new and innovative ways of educating children
- Improving student learning

- Introducing new and innovative forms of assessment
- Holding charter schools accountable for meeting state board and school district content standards and providing charter schools with a way to enhance and rethink accountability systems."

This summary will be helpful in understanding the subsequent discussion, and in evaluating the strengths and weaknesses of the existing charter school legislation in Colorado.

Politics of the Debate

Any far-reaching discussion of public schooling inevitably engenders political rhetoric, and the debate on charter schools is no exception. Political maneuvering, in fact, appears to have played a large role in the charter school movement both locally and nationally. As Mintrom and Vergari (1997) write, "It is important to note that charter school proponents bring different ideological persuasions to the issue. Charter school policy entrepreneurs situated both outside and inside state legislatures have ranged from liberal Democrats to conservative Republicans." Such a peculiar political alliance deserves further scrutiny.

One possible explanation for this bipartisan support lies in the genesis of the charter school concept. In an effort to incorporate principles of a market economy into education, conservative Republicans initiated in the latter half of the 1980's, and early 1990's, a discussion in support of voucher programs, which would provide to all school-age children a publicly funded voucher which could be redeemed by the child's family at a school of their choosing – public or private. As this innovation garnered more and more support, liberal Democrats, alarmed by the potential social and financial implications of voucher programs, felt compelled to engage in the debate.

Those opposing vouchers sought some degree of government regulation to offset the effects of a market-driven educational system, and also objected strongly to the notion that private schools would be supported with public monies. Critics of voucher programs have suggested that such programs would disproportionately benefit those already in a position to attend private schools, and would not provide genuine choice for lower-income families.

Negotiating these disagreements has led, in many states, to the compromise that is represented by charter schools. "Political interests who oppose voucher programs have often supported the charter school idea in an attempt to appease voucher proponents and prevent lawmakers from giving serious consideration the voucher idea. On the other hand, many voucher proponents have actively supported the charter school innovation with the political aim of securing this reform as an interim step on the way to the achievement of a voucher policy."(Mintrom and Vergari, 1997) In this light, it is clear to see the political maneuvering that has characterized the charter school debate. And while the charter school movement does, in fact, have broad political support, the agenda is largely driven by typically Republican concerns. This fact is underscored by the findings of Mintrom and Vergari (1997) that "consideration of the charter school idea is more likely in states where the Republican Party controls both houses of the legislature."

Political concerns also operate beyond conventional party lines, as charter school concepts and legislation are often vigorously opposed by stakeholders in the traditional

educational establishment. (Chubb and Moe 1990, Fitzgerald 1995, Mintrom and Vergari 1997) The vested interests of teachers' unions and school board associations have often led these groups to lobby, with varying degrees of effectiveness, for modifications to charter school legislation as it is originally introduced. Support for charter schools from these groups, when it is forthcoming, can sometimes "come at the cost of compromising important elements of the charter school concept." (Mintrom and Vergari, 1997) As charter schools take aim at the entrenched beauracracy, opposition from current stakeholders comes as little surprise. What is important to note, however, is that this sets up another political contest between conservative- and liberal-minded educators. Conservatives in this sense are those that argue for teacher and district protections, while proponents of a more liberal view are those that argue for a greater focus on student learning. This debate shares some characteristics of the traditional Democrat versus Republican debate, but also adds some nuances that serve to blur the distinction. While Democrats have traditionally been the party of the unions, politicians of all stripes have questioned the role of the teachers' unions in offering palliatives in the face of growing concerns about public schooling in the United States. Republicans and Democrats alike can get behind legislation that offers some promise to improve student achievement in our schools.

While the political compromise that undergirds the charter school movement has enabled it to move forward with broader support and fuller consideration of the social, educational, and financial ramifications, there are also some costs to these compromises, to which I shall return at the conclusion of the paper. But it will be helpful to turn now to the ways in which charter school legislation can be evaluated, and to discern the political concerns that lie behind some of these evaluative criteria.

Evaluation Frameworks

In evaluating Colorado's legislation, or that of any state, there are several studies and frameworks to which we may turn. A variety of terms are used to denote differences in legislation and to compare the relative merits of charter school laws. These comparisons are most often described as "strong" vs. "weak,", "autonomous" vs. "less autonomous," and "expansive" vs. "restrictive."

The Hudson Institute has been very active in promoting and evaluating the charter school movement. The Hudson Institute's Educational Excellence Network, in consultation with the Brookings Institute, undertook a two-year study entitled "Charter Schools in Action." As part of their final report, the Hudson Institute (1997) issued a briefing, "The Policy Perils of Charter Schools," in which they articulate seven elements of "stronger" charter school legislation. The particular utility of their framework is that they divide the central issues into three main categories – autonomy, adequacy, and accountability. As one can see from looking at other evaluative criteria, these are indeed enduring themes in charter school debates across the nation. Here is their explanation of these categories (with emphases added):

Autonomy

(1) Under a strong law, the state's charter schools are essentially *self-governing*, save for a few rules (e.g., open admission) that all must follow. They are accountable for their results but free to produce those results as they see fit. That freedom means, among

other things, that the charter school is not legally part of a school district (unless it wants to be), nor are its daily affairs overseen by officials other than its own. Insofar as its fate rests in the hands of external decision-makers (e.g., the issuance or renewal of a charter by district or state authorities), ultimate decisions are made by disinterested parties rather than those whose own interests are affected by the decision. In practice, that usually means that a charter school's fate ought not rest in the hands of the district from which it "seceded"-or seeks to secede. That's why we favor *multiple charter sponsors and appeals mechanisms*, and why it's been our impression that state-sponsored charters often encounter fewer hassles and more support than district-sponsored schools.

(2) Charter schools come in many flavors and can emerge from many directions. Both new and conversion schools are possible (and desirable), *and may be initiated by a wide variety of persons, groups, and organizations*. The tests of their viability are whether they deliver the results they promise and whether anyone wants to attend them, not whether various interest groups and stakeholders give prior assent to their existence or whether they fit arbitrary categories of who should or shouldn't be allowed to run schools.

(3) Charter schools *are automatically waived from numerous (state and local) laws, regulations, and contractual provisions that go well beyond matters of curriculum and instruction*. They do not have to negotiate each exemption.

Adequacy

(4) Financial provisions for charter schools are fair, which generally means that they are *equal to those of conventional public schools*. They receive their full share of operating revenues per pupil, auxiliary moneys (e.g., transportation, textbook aid, food programs), "categorical" funding, and capital.

(5) *A critical mass of charter schools is allowed to exist*. Not until a significant fraction-a reasonable conjecture is about 5 percent-of a state's pupil population has the option of attending charter schools will we have a genuine test of their marketplace appeal or a satisfactory basis on which to appraise their educational value. And that, of course, is a level of participation that no state has yet approached. The longer it takes to attain that level, the longer we delay the arrival of definitive information about the appeal and efficacy of the charter alternative. That's one reason that *artificial "caps" on the number of charter schools (or pupils) are bad policy. So are quotas that specify certain numbers of schools that must locate in particular communities or serve specified categories of students.*

Accountability

(6) Only where a state has *solid educational standards and good assessments* in place will we ever have truly satisfactory information about the performance of charter schools vis-à-vis conventional schools.

(7) Although charter schools should have most laws and regulations waived, those regulations that remain (e.g., civil-rights laws, background checks of school personnel) must be scrupulously enforced. Honest enforcement mustn't be undermined by, say, legislated exemptions, unduly long waiting periods, or forgiveness provisions designed to allow misfunctioning charter schools to evade accountability.

There is significant value in these evaluation categories, to which I intend to return in seeking to understand criteria offered by other researchers. It is also my position

that these categories are broad, perhaps necessarily so, and that greater detail and specificity is needed to understand the nuanced policy issues that pertain to equity of educational opportunity. For example, the idea of adequacy should, in my opinion, be enlarged to encompass issues of start-up assistance – legal, technical, and financial. Without *adequate* support in the start-up phase, a charter school is unlikely to open its doors. Equity concerns play a prominent role in the availability and accessibility of these start-up supports.

Despite their broadness, these categories – autonomy, accountability, and adequacy – are very helpful in examining the legislation. The Hudson Institute did not apply their criteria to specific legislation in an attempt to evaluate or compare states' charter school laws. Let us turn now to some researchers who have attempted this more controversial task.

Louann Bierlein (who subsequently served on the Hudson Institute's team of researchers) and Lori Mulholland, of the Morrison Institute for Public Policy at Arizona State University, have offered nine criteria by which to judge the strength of charter school legislation at the state level (1994). These criteria are:

1) At least one other public authority besides the local school board is able to sponsor a charter school (e.g., county board, state board, university).
2) A variety of public or private individuals/groups are allowed to organize, seek sponsorship, and operate a charter school.
3) Charter schools become discrete legal entities; they do not remain a part of a school district under the control of the district board and district-negotiated employee agreements.
4) Charter schools, as public entities, embrace common school ideals – nonsectarian in programs and operations, tuition-free, non-selective in admissions, non-discriminatory in practices, and accountable to a public body.
5) Each charter school is held accountable for its performance, both by parents and by its sponsoring public authority; failure of a charter school to meet the provisions of its contract results in closure.
6) In return for stricter accountability, charter schools are automatically exempted from all state and local laws and regulations (i.e., super waiver) except those related to : health and safety; nondiscrimination and civil rights; fiscal and outcome accountability; and those agreed to within their charters.
7) A charter school is a school of choice for students, parents, and teachers; no one is forced to be there.
8) Each charter school automatically receives the full operating funds associated with its student enrollment (i.e., fiscal autonomy).
9) Within a charter school, teachers have the option to work as employees or they may become more of an owner and/or subcontractor. If previously employed in a district, they retain certain "leave" protections (e.g., seniority, retirement benefits) should they choose to return within a designated time frame.

Bierlein and Mulholland use this framework to evaluate existing (as of August 1994) charter school laws. They chose their particular criteria with an eye towards two goals: "to develop improved learning environments and positively impact the overall system." However, in a peculiar and unexplained maneuver, their evaluation is not a

ranking that appears directly to correspond with all nine of their criteria. Rather, they group state legislation into those "granting more autonomy" and those "granting less autonomy." In this schema, Colorado figures as a more autonomous state, and thus receives a positive evaluation. Without an adequate explanation of their methodology, however, this evaluation is suspect, for Colorado's legislation does not yet include a superwaiver, full legal autonomy is not granted to charter schools, and fuller fiscal autonomy is called into question by the per-pupil-operating-revenue (PPOR) percentages that are routinely part of a new school's charter. Even more important, considering that all nine of their criteria do not fall under the heading of autonomy, Bierlein and Mulholland's framework appears flawed in its evaluation of charter school legislation, although it does provide helpful guidance in further consideration of the qualities and characteristics of effective charter school laws.

The Center for Education Reform offers a more detailed and quantitative framework for evaluating charter schools in its rankings of legislation from 30 states(1997). In their evaluation, the Center for Education Reform ranked charter school laws using the ten criteria below:

- Number of schools: States that permit an unlimited or substantial number of autonomous charter schools encourage more activity than states limited the number of autonomous schools, or allow unlimited charter schools but with restrictions on their autonomy (e.g. public school conversions), demographics (must serve a specific student population), etc.
- Multiple chartering authorities / binding appeals process: States that permit a number of entities in addition to or instead of local school boards to authorize charter schools, or that provide applicants with a binding appeals process, encourage more activity than those that vest authorizing power in a single entity, particularly if that entity is the local school board, or provide only an advisory appeals process.
- Variety of applicants: States that permit a variety of individuals and groups both inside and outside the existing public school system (such as teachers, parents or other citizens, non-profit organizations, and businesses) to start charter schools encourage more activity than states that limit eligible applicants to public schools or public school personnel.
- New starts: States that permit new schools to start up encourage more activity than those that permit only public school conversions. (Permitting private-school conversions, for-profit companies and home-based charter schools encourages even more activity.)
- Formal evidence of local support: States that permit charter schools to be formed without having to prove specified levels of local support (such as having a majority of teachers and parents sign a petition or winning the approval of the local bargaining unit) encourage more activity than states that require such demonstrations of support. (Because charter schools are schools of choice, sufficient enrollment provides de facto evidence of local support for the school.)
- Automatic waiver from laws and regulations: States that provide automatic blanket waivers from most or all state and district education laws, regulations, and policies encourage more activity than states that provide no waivers or require charter schools to negotiate waivers on an issue-by-issue basis with charter-granting authorities. (In

no case, however, are civil rights laws or health/safety codes waived for charter schools.)

- Legal / operational autonomy: States in which charter schools are independent legal entities (non-profit organizations, for example) that can own property, sue and be sued, incur debt, control budget and personnel, and contract for services encourage more activity than states in which charter schools remain under district jurisdiction. In addition, legal autonomy refers to the ability of charter schools to control enrollment numbers, with no special conditions imposed by the charter law or the local district on its policies.
- Guaranteed full funding: States where 100% of per-pupil funding (based on average state or district per-pupil costs, as well as federal categorical funding) automatically follows students enrolled in charter schools encourage more activity than states where the amount of funding is automatically set below 100%, or must be negotiated with the district.
- Fiscal Autonomy: States that give charter schools full control over their own budgets, without the district holding the funds, encourage more activity than states that do not.
- Exemption from collective bargaining agreements / district work rules: States that give charter schools complete control over personnel decisions (hiring, firing, salary structure, etc.) encourage more activity than states where charter school teachers must remain subject to the terms of district collective bargaining agreements or work rules.

While there is significant overlap with Bierlein and Holland's criteria, in their report, the Center for Education Reform indicates that these "laws are judged not only on their intent, but also on their effect…Scores take into account both official provisions…and the realities of actual implementation." In this way, their evaluation may seem more far-reaching. But this framework is also unnecessarily restrictive, as it, too, places autonomy as the paramount concern. In this case, the evaluative principle is a charter school law's "expansiveness," which they explain as "how that state's provisions…support or restrict the development of a significant number of autonomous charter schools." Judged once again primarily on autonomy, Colorado figures 14th out of 30 charter school laws in the nation.

Mark Buechler, a researcher with the Indiana Education Policy Center offers twelve criteria for evaluating charter school legislation that are nearly identical to those offered by the Center for Education Reform (1996), and cited in their evaluation. He, too, uses the framework of expansive versus restrictive legislation, although he does not apply these criteria to the states as does the Center for Education Reform (CER). It is interesting to note, however, that one of the additional criteria Buechler identifies, that is not subsequently adopted by CER, is adequate start-up funds. While Buechler conceives of start-up funds as contributing to greater autonomy, this issue is largely one of adequacy.

Assumptions of the Frameworks

In most of these oft-cited evaluations, then, there is general agreement about those qualities that define effective charter school legislation. Yet, one is left to wonder why concerns about accountability and adequacy are subsumed under the heading of autonomy, or worse, ignored altogether in evaluating these laws. While it can be said that

increases in accountability might come at the expense of autonomy, the same is almost certainly not true of adequacy measures. It would seem that in the interest of equal educational opportunity and enhancing educational options for all students, issues of accountability and adequacy would merit further consideration.

Generally, by the measures provided in the frameworks described above, Colorado ranks relatively high in indices of strength of legislation. But, considering that significant issues of accountability and adequacy are often overlooked, these matrices alone are insufficient for evaluating some larger policy issues and social ramifications. To use but one example, Arizona and Michigan rank at or near the top of many of these studies due to the high degree of autonomy in their legislation, but their charter schools are not without significant problems. Recent media accounts have depicted problems in Arizona's and Michigan's charter schools owing to a stark lack of oversight and accountability, and segregation along racial and religious lines. (Mahtesian 1998, Toch 1998) While Colorado's problems may not be as severe, a narrow focus only on autonomy may allow inequities and injustices to grow unabated. In light of this, a more critical examination of the legislation is warranted.

Issues of Equity:

It is of particular note that Colorado's charter school legislation declares that among its purposes is "to increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low-achieving." Furthermore, within the limit of fifty charter schools authorized by the 1993 legislation, thirteen of these were (and are) to be "designed to increase the educational opportunities of at-risk pupils," who are defined in the law as pupils who, "because of physical, emotional, socioeconomic, or cultural factors, [are] less likely to succeed in a conventional educational environment." (In fact, it is written that priority of consideration should be given to those charter school applicants who intend to serve at-risk populations.) While these emphases are admirable, their intent does not necessarily bear out in the reality to be found in the implementation of the legislation.

First, it must be recognized that the definition of "at-risk" offered in the legislation is vague. Similarly, it should be acknowledged that no basis is offered by which one can evaluate "academically low-achieving." Working within the scope of the legislation as it is written, then, it is not unreasonable to assume that many urban and minority students would fit the label "at-risk." And, depending on which measures are used to determine "academically low-achieving," many more of Colorado's urban students than suburban students will fit this description.

Hence, in evaluating Colorado's legislation in accord with its own stated aims, we would do well to examine how Colorado measures up in terms of serving at-risk and underachieving students. In this regard, it is telling that in Wendy Schwartz's 1996 study "How Well are Charter Schools Serving Urban and Minority Students?" Colorado fared poorly. In a 1995 national survey of charter schools, Schwartz found Colorado to rank at the bottom in terms of minority student composition. Equally noteworthy is her finding that Colorado also ranked last in terms of charter school students eligible for a subsidized lunch program, an indicator of low socioeconomic status. These findings should at least

prompt Colorado legislators, parents, and educators to revisit the efficacy of the legislation for these targeted groups.

Further support for this reexamination of Colorado's law can be found in the 1997 Colorado Charter Schools Evaluation Study conducted by the Colorado Department of Education. The evaluation report offers the following comments:

> "Colorado charter schools are serving students of color, students who are educationally disadvantaged by poverty and students who are eligible for special education services. However, less than half of the schools are serving a similar proportion of these students as their sponsoring districts.... Colorado is the exception to a national trend that shows charter schools are serving a *more* diverse and underprivileged student population than conventional public schools." (pp. vii-viii)

In addition to these documented concerns, there are also philosophical and political reasons why we should not be idle in the face of these equity issues. The dominance of the Republican agenda, and, by extension, the increased role of free-market principles in charter school discussions do not bode well for low-income families. There are some significant limitations, captured best by House (1998), in applying free-market principles to education, that argue against their broad application to policy recommendations.

Although House is supportive of charter school measures, he offers some cautionary notes about the assumptions that reign in the application of free-market notions to schools and schooling. Most instructively, he suggests that when viewed (as it ought to be) through the lens of transaction cost economics, education does not and cannot function as a neo-classical market. Simply put, the playing field is not level, the "market" is not "free." Opportunism and access to resources and knowledge provide for vast differentials in educational opportunity. This should not come as a surprise to America's underclass, for whom it is most apparent that capitalism does not automatically equate with democracy. It is this type of concern for preserving the values of democracy that gave rise to liberal support for charter schools, as distinguishable from voucher plans. If we are truly committed to government regulation for the preservation of democratic principles in education, then it is incumbent upon us to scrutinize the effectiveness of government oversight to ensure that we employ certain safeguards which increase the likelihood of equitable access to educational opportunity. If equity is not vigorously defended, then democracy and justice will not be served. It is my sincere hope that the available statistics, in conjunction with this more philosophically and morally principled stance, will move us to action. But what is it that should be done? In the following section I outline some suggestions that policymakers might heed in safeguarding equity in the development of charter schools in Colorado.

Overcoming Barriers to Entry

For any group interested in submitting a charter school application, a formidable amount of time and resources must be devoted to the task. The barriers that must be overcome before an interested party can open a charter school fall generally into three categories: financial, technical, and legal support. It is my position, supported by the demographics of the areas in which Colorado charter schools are opening at the highest rates, that these forms of support are more readily available in Colorado to groups that

identify with higher socioeconomic strata. It follows then, that if we are to make good on the legislative intent to "increase the educational opportunities of at-risk pupils," and if we are concerned about equitable access to educational opportunities, then we should take public measures to ensure that all parties interested in forming a charter school have sufficient financial, technical, and legal assistance. Let us look first at the financial issues.

The Colorado Charter Schools Act states clearly that "It is the intent of the general assembly that funding and service agreements…shall be neither a financial incentive nor a financial disincentive to the establishment of a charter school." However, when one considers the funding arrangements provided for by the state, it is difficult to understand how such arrangements could be viewed as anything but a financial disincentive, particularly for groups that come from low-income neighborhoods and wish to charter a school. "The standard practice of state charter laws is to start the schools' money flowing when, and only when, their pupils arrive." (Finn, Manno, Bierlein, and Vanourek 1997) This puts an extraordinary burden on would-be charter sponsors to foot the bill for most or all of the start-up expenses. Yet, "the charter school legislation provided no start-up funds for the schools and no additional resources to [the Colorado Department of Education] to support its role in helping implement the law. (Fitzgerald 1995) This is especially problematic for low-income groups, as Finn, et alia (1997), conclude: "The absence of start-up funding turns out to be a particular handicap for low-income parent groups and others without many resources of their own – and often without much experience in the private fund-raising that has become the key to getting start-up dollars for many charter schools."

If low-income neighborhoods are, in fact, to overcome this financial barrier to opening a charter school, the funding problems may very well continue in an inequitable fashion. This is due to the charter school funding formula called for in the legislation, which uses "per pupil operating revenues" (PPOR) as the basis for determining the bulk of a charter school's public funding. The problem arises from the fact that charter schools are guaranteed only 80% of the PPOR of the local district, and must negotiate with the district for a greater share of funding. "The majority of charter schools receive a funding rate from their sponsoring districts between 80% and 90%." (CDE, 1997) Although I recognize that there are district-wide concerns that must be taken into account, it strikes me that this formula continues to put at a disadvantage those schools who have the hardest time mustering up sufficient funds to operate a charter school. It is interesting to note that the one district that uses a different approach that is more favorable to charter schools is located in a relatively affluent area.

Changing this formula on the state level appears to have broad support. In the spring of 1997, "a bill to boost that figure [80% PPOR] to 95 percent cleared the legislature but was vetoed by Governor Roy Romer, reportedly because the state's teacher unions and school-board association pressed him not to make life easier for charter schools in this way." (Finn, et al. 1997) This sad development, if true, lends further credence to my thesis that political self-interest has given rise to compromise at the expense of low-income neighborhoods.

The disadvantaged position of low-income groups can be discerned further when one considers the additional barriers to starting up a charter school – technical support

and legal assistance. Both of these issues surface in negotiating the paperwork attendant to the charter school application. The issues of school facilities and of waivers from state regulations illustrate some of the significant needs for technical support faced by charter-seeking groups. If space is not available within an existing school district facility, a charter-seeking group must identify feasible sites for their proposed school. While this is not an unreasonable requirement, the availability of expertise in negotiating commercial-type leases may vary widely across communities. Thus, it is also not unreasonable that the state might provide some guidance and assistance in these matters.

The problem of technical support is more clearly evidenced in the state's handling of waivers. Currently, a charter school must submit individual petitions for waivers in each of many categories, requiring a vast amount of research, paperwork, and preparation – which, I would argue, is disproportionately more taxing on low-income charter school groups. The overwhelming majority of charter schools in Colorado, however, have applied for roughly the same core set of waivers. "This clear pattern of requests argues in favor of a "superwaiver" approach to releasing charter schools from those state laws and regulations that charter schools most commonly seek to waive. This approach would save both the charter schools and the State Board of Education/CDE the considerable time and effort involved in the waiver application development and hearing process." (CDE 1997) While the state legislature has sought to streamline the waiver process, as of this writing, they have only gone so far as to change the legislative requirements of the State Board of Education so that they need reply to waiver requests only in the event that they are being denied. This is a very small step that still unfairly burdens the charter school sponsors. One can see in this effort that the "regulatory process starts from a completely different assumption than charter schools do. [The government] takes for granted that schools must be tightly regulated until and unless they obtain waivers from specific rules. The charter concept, of course, is just the opposite: that schools should be free to decide these things for themselves so long as their results are satisfactory." (Finn, et al. 1997) A superwaiver would not only increase the autonomy of charter schools, but also would provide a measure of equity in navigating the labyrinth of paperwork by offering much needed technical assistance to those communities who may have fewer resources to devote to the waiver-seeking process.

Legal advice is an even more pressing area in which equity concerns can be found. "The absence of legal advice and assistance is by far the biggest and most common concern [for charter school sponsors.]…[T]he availability of legal assistance is a strong factor in navigating the appeal process…[and] is also a factor in a charter school's ability to articulate a comprehensive and thoughtful application upon initial consideration." (Fitzgerald 1995) So, without appropriate legal support, a charter-seeking group may be at a distinct disadvantage from the very beginning of the process.

This conclusion is underscored by the results of a survey of operating charter schools when asked about their most pressing needs during the application phase. The leading response, registered by 71% of respondents, was "legal assistance in negotiating the charter contract, the waiver request, the lease, and other legal documents." (CDE 1997) Extensive legal assistance of this type typically comes at a steep price – sometimes prohibitively expensive for low-income community groups.

One of the only resources available to these groups is the League of Charter Schools, a privately funded grassroots effort of charter school advocates, that provides "both focused legal and technical support, publicity and advocacy for charter schools, and assistance to potential applicant groups." (Fitzgerald 1995). It is my position, however, that some of these responsibilities should be shared by public authorities. This is complicated by the decision of the state board of education, which "determined that CDE could not provide school districts or applicant groups with legal assistance or advice regarding political strategies but must remain neutral in those areas. One major consideration was the fact that the state board serves in a semi-judicial role when it hears appeals from applicants who have been denied charters by their local boards." (Windler 1996) In light of this decision, and in consideration of the substantive legal elements of the charter school process, a concern for equity would strongly suggest that the state bears some responsibility to provide free or low-cost legal advice to charter applicants who are not otherwise able to afford such assistance.

Policy Recommendations

I have tried to argue in this paper that Colorado's Charter School Act, while strong in many regards, consistently fails to attend to concerns of equity in the implementation of the legislation. The following caution, largely unheeded since appearing in print in 1995, is still germane today:

> "Policy makers and reform advocates need to think carefully about how to make the tool of charter schools a real option available to parent and teachers in poor, under-funded areas and in communities of color." (Fitzerald, p. 30)

Let me now summarize those policy recommendations that I believe to have some bearing on questions of equity in Colorado's charter school movement. Many of these recommendations are not new, and nearly all of them are explicitly supported by the evaluation studies cited above.

Financial Issues:

It is clear from the reports of those currently operating charter schools in Colorado that there is a compelling need for start-up funds to support charter schools. I have tried to make clear in this paper that the financial hurdles on the way to opening a charter school have considerable potential to act disproportionately as insurmountable obstacles for charter-seeking groups from low-income communities. One promising solution is for the state department of education to take full advantage of federal monies available through the "Public Charter Schools Program," authorized by Congress in 1994. States may apply to this program for funds that they can distribute among some or all of their charter schools. The funds are used mainly for schools' planning and start-up expenses. (Finn, et al. 1997) However, securing this money is not enough. The CDE must also consider equity issues in distributing these funds.

These funds, though, will not cover continuing shortfalls in state funding formulae, and so other funding sources should also be considered. There are currently some privately funded organizations to whom these groups can appeal, and information on these sources should be provided by the CDE to all start-up efforts. Among other solutions to this problem is to make readily available low-interest loans as some states

have done through charter school lending programs, or to lend public support to initiatives such as the Washington, D.C.-based non-profit organization Charter School Development Corporation, whose stated mission is to " provide or locate working capital and capital for charter school facilities and equipment." (Finn, et al. 1997)

Colorado could also go one step further, and follow the lead of Arizona in devising a new formula for distributing state-generated tax revenue that is more favorable to charter schools. As Colorado's current formula has been recognized as an equitable one, it would not be incongruous to extend this equity to charter schools. Along similar lines, the CDE could mandate all districts to use the model currently used by the Douglas County School District, which starts with 100% PPOR for charter schools, and deducts from that total "only those administrative services that the school affirmatively chooses to 'purchase' from the district." (Fitzgerald 1995) The bottom line is that in the interest of equity, it is imperative to provide public funding for legitimate charter school start-up endeavors.

Legal and Technical Assistance:

To alleviate the burdens on all charter applicants, we must simplify the waiver process. A superwaiver has been called for many times, and is clearly supported by evaluation studies. The time has come to act on this recommendation, and to recognize the ways in which this simple move can help to level the playing field for charter-seeking groups who have limited technical and legal resources.

This recommendation can be strengthened by also providing publicly supported legal assistance to all charter applicants. The research reveals that this is the area of greatest need for charter schools in the start-up phase, and a thoughtful analysis of this research yields a strong argument for the obligation of the state to provide legal support in the name of equitable and fair access to charter schools for all students. And for similar reasons, whenever and wherever possible, the state should have an obligation to provide assistance in locating and negotiating appropriate facilities.

Conclusion

Colorado's charter school legislation is strong on many counts. Yet, a careful consideration of equity issues reveals several ways in which the legislation could be strengthened, in many cases to better achieve the stated goals of the Charter School Act. While the charter school movement is still in its early stages, both in Colorado and across the country, there is early evidence that strongly suggests areas for improvement in the creation and implementation of charter school legislation. It is my position that Colorado legislators, educators, and parents have an obligation to heed this evidence that demonstrates that equity concerns are insufficiently addressed in the current implementation of Colorado's Charter School Act. Furthermore, I have sought in this paper to argue that political self-interest has given rise to compromise at the expense of low-income neighborhoods. Based on these concerns, I have outlined some possible directions in which we might proceed, and I have tried to offer a compelling rationale for moving us to action on these issues vital to the sustenance of democratic virtues in our educational system.

References

Bierlein, Louann A. and Mulholland, Lori A., (1994) *Comparing Charter School Laws: The Issue of Autonomy*, Tempe, Arizona: Morrison Institute for Public Policy.

Center For Education Reform (1998), "Charter School Highlights and Statistics," March 10, 1998 [last update], Available: http://www.edreform.com/pubs/chglance.htm. March 10, 1998.

Center For Education Reform (1998), "Charter School Highlights and Statistics," March 10, 1998 [last update], Available: http://www.edreform.com/pubs/chglance.htm. March 10, 1998.

Colorado Department of Education (1993), *The Colorado Charter Schools Act of 1993: Information Packet*, Denver, Colorado

Colorado Department of Education (1997), *The Colorado Charter Schools Evaluation*, Denver, Colorado: University of Colorado, Denver.

Colorado Senate Bill 93-183 (1993), *Colorado Charter Schools Act*

Finn, Chester E., Bruno V. Manno, Louann A. Bierlein, and Gregg Vanourek (1997). *Charter Schools in Action: The Policy Perils of Charter Schools*, Indianapolis: Hudson Institute.

Fitzgerald, Joy (1995), *Charter Schools in Colorado*, Denver, Colorado: Colorado Children's Campaign

Mahtesian, Charles (1998), "Charter Schools: Learn a Few Lessons," *Governing*, Jan. 1998, pp. 24-27.

Mintrom, Michael, and Sandra Vergari (1997), *Political Factors Shaping Charter School Laws*, Paper presented at the Annual Meeting of the American Educational Research Association, Chicago, Illinois.

Schwartz, Wendy (1996), "How Well Are Charter Schools Serving Urban and Minority Students," *ERIC/CUE Digest*, Number 119, November 1996.

Windler, William (1996), "Colorado's Charter Schools: A Spark for Change and a Catalyst for Reform," *Phi Delta Kappan*, September 1996, pp.66-69.